



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1996

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR96-2133

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101894.

The Texas Department of Criminal Justice (the "TDCJ") received an open records request for documents which pertain to particular TDCJ employees which relate to:

- (1) All complaints filed, either by staff or inmates;
- ...
- (3) All investigations conducted against said employee, and their outcome;
- (4) All arrests and convictions prior to and during employment with TDCJ;
- (5) All "use of force" charges filed, and their disposition;
- (6) All internal affairs division investigations documented;
- ...
- (10) All allegations of retaliation or harassment filed by inmates.

You contend that the documents requested, of which you provide representative samples,¹ are excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108 and 552.111 of the Government Code.²

You explain that the TDCJ's Internal Affairs Division functions as a regular police investigative agency and that the documents requested may involve investigations initiated as criminal investigations, and that there are practical reasons for not admitting the existence of a particular investigation. Correspondingly, section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[an] internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code Section 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). After review of the documents contained within Attachments B and C containing exemplars of use of force investigations and also exemplars of criminal investigations, we conclude that you may withhold the information from disclosure through the application of section 552.108 of the Government Code.³

Attachment D and Attachment E, respectively, contain TDCJ exemplars in investigation of staff conduct, harassment and retaliation investigations, as well as exemplar inmate grievance reports. You state that the material in these attachments is specifically made sensitive by the Stipulated Modification of Section II and Section IIA of the amended decree in *Ruiz v. Estelle*, 503 F.Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983)⁴. Section 552.107(2) provides that information is excepted from the requirement of section 552.021 if a court by order has prohibited disclosure of the information as discussed in Open Records Decision No. 560 (1990). Accordingly, on the basis of Open Records Decision No. 560 (1990) through section 552.107(2), we conclude that Attachments D and E may not be disclosed.⁵

¹In reaching our conclusion here, we assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We assume that you have released to the requestor all of the information you determine as coming within numbers 2, 7, 8, and 9 of the request. In response to your position on the documents under number 11, we note that although TDCJ has no obligation to compile or prepare new information, it must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 605 (1992), 561 (1990).

³With respect to Attachments B and C, we need not reach the exceptions raised under sections 552.101, 552.103, 552.107, 552.111 and 552.117 of the Government Code at this time.

⁴The language of the *Stipulated Modification* was retained by reference in the *Final Judgment*.

⁵With respect to Attachments D and E, we need not reach the exceptions raised under sections 552.101, 552.103, 552.107, 552.111 and 552.117 of the Government Code at this time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 101894

Enclosures: Submitted documents

cc: Mr. Kyle C. Riddlesperger
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(w/o enclosures)